

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 146

May 25, 1999, 7:24 p.m.
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DEFENSE AUTHORIZATION/DoD and Prison Labor Purchases

SUBJECT: National Defense Authorization Act for fiscal year 2000 . . . S. 1059. Gramm amendment No. 392.

ACTION: AMENDMENT REJECTED, 49-51

SYNOPSIS: As reported, S. 1059, the National Defense Authorization Act for fiscal year 2000, will authorize a total of \$288.8 billion, which is \$8.3 billion more than requested by the Clinton Administration and which represents a 2.2-percent real increase in defense spending. Highlights include a 4.8-percent pay raise and a \$3.4 billion increase in military construction.

The Gramm amendment would strike section 806. That section will effectively eliminate mandatory source status for products produced by Federal Prison Industries (FPI) that are purchased by the Defense Department. FPI is a wholly-owned corporation of the Federal Government that makes products using Federal prison labor. The mandatory-source status gives FPI the right to make and sell goods to Federal agencies at market prices when those agencies seek outside contractors. The FPI conducts market research to determine the normal prices for the goods it produces, and it makes catalogs of the products it produces available to Federal agencies. If an agency believes that FPI cannot meet its delivery, price, or technical requirements, it can request a waiver from the FPI to seek a different contractor. Waiver requests, on average, are acted upon within 4 days, and an average of 90 percent of waiver requests are approved. Approximately 25 percent of Federal prisoners who are eligible to work work for Federal Prison Industries. Approximately 60 percent of all FPI purchases are by the Defense Department. Section 806 will change this system by requiring the Defense Department to conduct market research to determine if a product produced by FPI is comparable in price, quality, and time of delivery to products produced by the private sector. If not, it will use competitive bidding to purchase that product. Also, it will exempt entirely from FPI requirements purchases of any products: that are integral or embedded in non-FPI products; that are national security systems; or that are below the micropurchase threshold. "National security" requirements will be defined as certain telecommunications or information systems.

NOTE: At the end of the vote, Senator Gramm voted "nay" in order to be able to move to reconsider the vote (only a Senator on the prevailing side of a question may move to reconsider a vote). The Senate subsequently voted in favor of reconsidering the

(See other side)

YEAS (49)			NAYS (51)			NOT VOTING (0)	
Republicans (38 or 69%)		Democrats (11 or 24%)	Republicans (17 or 31%)	Democrats (34 or 76%)		Republicans (0)	Democrats (0)
Ashcroft	Jeffords	Biden	Abraham	Akaka	Landrieu		
Bennett	Kyl	Byrd	Allard	Baucus	Lautenberg		
Bond	Lott	Dorgan	Bunning	Bayh	Leahy		
Brownback	Mack	Durbin	Collins	Bingaman	Levin		
Burns	McCain	Feinstein	Enzi	Boxer	Lieberman		
Campbell	McConnell	Graham	Frist	Breaux	Lincoln		
Chafee	Murkowski	Harkin	Gramm	Bryan	Mikulski		
Cochran	Nickles	Hollings	Grassley	Cleland	Moynihan		
Coverdell	Roberts	Kerrey	Hagel	Conrad	Murray		
Craig	Roth	Kohl	Helms	Daschle	Reed		
Crapo	Santorum	Rockefeller	Hutchinson	Dodd	Reid		
DeWine	Sessions		Inhofe	Edwards	Robb		
Domenici	Shelby		Lugar	Feingold	Sarbanes		
Fitzgerald	Snowe		Smith, Bob	Inouye	Schumer		
Gorton	Specter		Smith, Gordon	Johnson	Torricelli		
Grams	Stevens		Thomas	Kennedy	Wellstone		
Gregg	Thompson		Warner	Kerry	Wyden		
Hatch	Thurmond						
Hutchison	Voinovich						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

vote (see vote No. 150), and then adopted the amendment by voice vote.

Those favoring the amendment contended:

Over the last 10 years the number of people in Federal prisons has more than doubled, climbing from 51,153 in 1989 to 108,207 in 1998. Almost all of them are healthy young men in their prime working years. Those men should be productively engaged by Federal Prison Industries (FPI), learning work skills that will keep them out of prison when released, keeping busy and thus out of trouble while in prison, and earning money to pay for their incarceration and to pay restitution to their victims. Unfortunately, only 25 percent of eligible Federal prisoners are employed by FPI. FPI employs as many prisoners as it can, but its ability to put prisoners to work is sharply limited by 3 Depression-era laws that make it almost impossible to sell products in America made with prison labor. Those laws make it illegal in almost all cases to sell prison goods and services to the general public. The only real option that still exists is to sell goods to the Federal Government.

Before the Great Depression, America had a model prison system that was the envy of the world. Prisoners typically worked 12 hours per day in prisons that were more humane than their foreign counterparts in which no one worked and in which treatment was often cruel. Then, during the Depression, laws were enacted to stop the sale of products and services by prisoners because private businesses, struggling to stay solvent in the depression, and unions, struggling to keep jobs for their members in an era of tremendous unemployment, did not like the competition. The only customer left for prison products was the Federal Government. For the last 60 years, this last vestige of America's once great prison labor system has continued to provide productive employment for Federal inmates.

Now, though, in a period of unprecedented prosperity and historically low unemployment rates, we are being asked by businesses and unions effectively to take away FPI's last customer in the name of "competition." They want us to get rid of the current preference that Federal agencies give to goods produced by FPI. However, if businesses and unions were really interested in competition, they would also be advocating the repeal of all of the other laws that keep FPI from competing with them in the private sector. Their excuse for wanting to retain those laws is that inmates are paid low wages, so prisons have an unfair advantage; true enough, but businesses have their own enormous unfair advantages over prison labor. For instance, businesses do not try to structure their businesses to employ as many people as possible, despite inefficiencies (prisons do so to keep prisoners occupied and thus out of trouble), businesses do not have to have armed guards watching their employees, businesses do not have to search their employees each night to make sure they are not sneaking off with tools to use as weapons later, and businesses do not have workforces comprised of mostly drug addicts, with an average of 8 years of schooling, who have never held full-time jobs and who are roughly only one-fourth as productive as other workers. Labor unions complain that prison labor unfairly competes against union labor--are they saying that the skills of prisoners and union workers are comparable? The largest unfair advantage that businesses and unions have, of course, is that they are not restricted to just one customer for the products they produce; they can compete in the free market; prisons may not.

Our colleagues have also suggested that we ought to support this amendment in the interests of saving the taxpayers money. They say that bidding on every product would get the best possible prices for those products. If this were a simple free-market issue, we would be with them in trying to see that sales went to the best bidders each time, but it obviously is not because prisons are not in the free market, and, even if they were, it would make more sense to put up with some inefficiencies in order to make inmates work. The goal of prison work is not simply to be competitive; they are to compensate victims, to rehabilitate criminals, to help pay the \$22,000 annual cost of incarcerating each prisoner, and to improve the safety of prisons.

Further, even if it were a simple free-market issue, there is ample evidence that the current system benefits taxpayers even when indirect benefits, such as lower prison costs and less crime costs from recidivist criminals, are not considered. The Defense Department, for instance, recently looked at its FPI purchases and its competitively bid purchases and concluded that it could save millions of dollars per year if it increased its FPI purchases instead of relying as much on competitive bids. The General Accounting Office (GAO) also looked at FPI and concluded that virtually all of the products purchased by the Defense Department had prices within the market range.

The prison system, victims rights groups, the Justice Department, and the Defense Department support the Gramm amendment. The only opposition is from business and union groups that are motivated by greed. There are 1.1 million prisoners in the country, comprising 1 percent of the potential labor force, and only 100,000 of them are in Federal prisons. Their working does not take a great deal of work away from the private sector. We urge our colleagues not to give in to the greed of businesses and labor unions that want to steal this tiny share of the economy that is being taken by Federal prisoners. We urge our colleagues to support this amendment.

Those opposing the amendment contended:

Argument 1:

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Section 806 of this bill will require FPI to compete for the Federal contracts it is awarded. FPI produces products with prison labor. It pays inmates low wages, and it does not provide any benefits. With these huge, unfair advantages, it should be able to win contracts fairly. As matters currently stand, though, it does not have to because it is awarded contracts without competition. As a result, it has no incentive to produce a superior product, on time, and at low cost. All it has to do is produce an adequate product at an adequate price, and it can then make an agency purchase its product instead of buying that product through competitive bidding. That type of low standard is understandably producing poor results. For the Defense Department, which has a very tight budget, poor results should not be permitted. When FPI is not involved, it can often negotiate with vendors and get prices that are well below market rates. With FPI, though, it is often forced to pay rates that are at the high end of the market or that even exceed normal commercial rates. For instance, a recent GAO analysis of 20 products offered for sale by FPI found that the prices for 4 of those products were greater than any other comparable products they could find on the market. Quality suffers as well. A survey done by the Defense Department found that fully 35 percent of its purchasers who buy FPI products reported problems with an FPI product within the previous year. Basically, the complaints were that they were being forced to purchase shoddy products or that they were delivered late or that they were being forced to pay high prices. This situation should not be allowed to stand. If we make FPI compete, we are confident that it will improve its products and will lower its prices. As long as we do not have a free market, though, it has no incentive to improve. Section 806 of this bill will give the needed incentive. We support that section, and thus oppose this amendment.

Argument 2:

We strongly support making prisoners work, and we support having them sell their products to Federal agencies. However, when it comes to national defense, we cannot support using the Federal budget to subsidize inferior products. If FPI can produce a quality product on time at a fair price, it should be able to win a defense contract. If it cannot meet those criteria better than a private sector competitor, then that private sector competitor should get the contract. If it were not a matter of providing a product for defense, we could accept higher prices and lower quality in order to gain the benefits that come from having prisoners gainfully employed. Under the circumstances, though, we must oppose this amendment.